

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

RALPH LYNN FERGUSON JR,

Plaintiff,

vs.

J. KEITH STANLEY, INDIVIDUALLY  
AND AS PARTNER AT FAIRCHILD,  
PRICE, HALEY & SMITH, LLP;

Defendant.

No.1:17-CV-00295-MAC

**REPORT AND RECOMMENDATION DISMISSING CASE FOR FAILURE TO SERVE**

This case is assigned to the Honorable Marcia A. Crone, United States District Judge, and is referred to the undersigned for pretrial management. On July 10, 2017, *pro se* Plaintiff Ralph Lynn Ferguson Jr. (“Ferguson”) filed a complaint against J. Keith Stanley for “professional negligence, gross negligence, malice, intentional infliction of emotion distress and fraud.” Doc. No. 1, p. 1. Ferguson paid his \$400 filing fee on July 10, 2017; however, it appears that Ferguson failed to effect timely service under Rule 4(m) of the Federal Rules of Civil Procedure. FED. R. CIV. P. 4(m). The record does not indicate that defendant was served with a summons and complaint within 90 days after the complaint was filed. If this is the case, the court must dismiss the action without prejudice or order that service be made within a specified time. *Id.* Because Ferguson has not shown good cause for failure to serve defendant within 90 days, the court need not extend the time for service. *Id.*

**I. RECOMMENDATION**

It is, therefore, **ORDERED** that Plaintiff Ralph Lynn Ferguson Jr.’s claims against defendant J. Keith Stanley should be dismissed without prejudice.

## II. OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1)(C) (Supp. IV 2011), each party to this action has the right to file objections to this Report and Recommendation. Objections to this Report must (1) be in writing, (2) specifically identify those findings or recommendations to which the party objects, (3) be served and filed within fourteen (14) days after being served with a copy of this Report; and (4) be no more than eight pages in length. *See* 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(2); E.D. Tex. Civ. R. CV-72(c). A party who objects to this Report is entitled to a de novo determination by the United States District Judge of those proposed findings and recommendations to which a specific objection is timely made. *See* 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(3).

A party's failure to file specific, written objections to the proposed findings of fact and conclusions of law contained in this Report, within fourteen (14) days of being served with a copy of this Report, bars that party from: (1) entitlement to de novo review by the United States District Judge of the findings of fact and conclusions of law, *see Rodriguez v. Bowen*, 857 F.2d 275, 276–77 (5th Cir. 1988), and (2) appellate review, except on grounds of plain error, of any such findings of fact and conclusions of law accepted by the United States District Judge. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996).

SIGNED this 9th day of January, 2020.

  
\_\_\_\_\_  
Zack Hawthorn  
United States Magistrate Judge